

1 claims?

2 A. Pam Zilly was involved in some of the
3 discussions as well. She is with Blackstone.
4 She is our financial advisor.

5 Q. What was her role?

6 A. Beyond being financial adviser, I don't
7 know. I wasn't directly involved.

8 Q. What was Mr. Festa's role?

9 A. I think primarily to ensure that the
10 other parties understood that the Grace
11 representatives there spoke with the full
12 authority of the company, but, again, I was not
13 present at the meetings and discussions that he
14 attended with the personal injury
15 representatives.

16 Q. Were you at any of the meetings with the
17 personal injury representatives?

18 A. No.

19 Q. I gather Mr. Hughes was?

20 A. I believe he was, yes.

21 Q. And Mr. Shelnitz?

22 A. Yes.

23 Q. Okay. I want to shift gears for a second
24 and turn to insurance. And, again, looking at



1 the issue pre-petition. Have you had any role or
2 did you have any role in connection with Grace's
3 liability insurance program before the petition
4 date?

5 A. No.

6 Q. Who was responsible for this at Grace?

7 A. Bob Beber handled it from the litigation
8 standpoint. And Jeff Posner was in charge of our
9 risk management function, including insurance.

10 Q. When did Mr. Posner leave Grace?

11 A. I honestly don't know. I don't recall.

12 Q. Was it after the petition date?

13 A. I believe it was before.

14 Q. And his title immediately before he left
15 was risk manager?

16 A. I don't know.

17 Q. But that's the function that he had, was
18 risk manager for Grace?

19 A. Yes.

20 Q. Post-petition, have you had any role in
21 connection with Grace's liability insurance
22 program?

23 A. A limited one. Limited to the extent of
24 motions that have been made or objections



1 asserted by insurance. To the extent an issue is
2 being litigated, I have been involved in
3 reviewing motion papers and related documents,
4 participating in conference calls on strategy.

5 Q. For dealing with the insurance?

6 A. For dealing with the insurance. Some of
7 the insurance issues. Certainly not all of them.

8 Q. Can you tell me which issues you're
9 talking about?

10 A. Issues related to the claims by Keneb
11 pipeline that they believe they are entitled to
12 insurance coverage. In connection with
13 remediation costs or potential responsibility for
14 remediation costs in connection with the Otis
15 pipeline.

16 There were a few others. I'm just
17 drawing a blank right now.

18 Q. Have you had any role in the Scotts
19 adversary proceeding?

20 A. Yes. Thank you. Yes, I have reviewed
21 the papers, not that there have been much --
22 there has been much recently. But I did review
23 the adversary proceeding papers when Scotts first
24 commenced its adversary proceeding. And, again,



1 participated in conference calls relating to
2 their claim that they are entitled to coverage.

3 Q. And with whom were these conference calls
4 that you participated?

5 A. Outside counsel from Kirkland & Ellis.
6 And Mr. Posner is often on those calls. I think
7 that's -- and it's usually the same group.

8 Q. Did you play any role in the manner in
9 which insurance is handled under the plan?

10 A. No.

11 Q. Who did?

12 A. Other than Kirkland & Ellis, I don't know
13 who else was involved.

14 Q. Other than what you have just described,
15 have you had any role in the manner in which
16 insurance, unsettled insurance, is handled under
17 the plan?

18 A. No.

19 Q. How about any role in connection with the
20 manner in which settled insurance is handled
21 under the plan?

22 A. No.

23 Q. Did anyone replace Mr. Posner as the risk
24 manager?



1 A. No. He basically still serves the same
2 function but as an outside consultant.

3 Q. Okay. Thank you.

4 (Finke Deposition Exhibit No. 12
5 was marked for identification.)

6 BY MR. BROWN:

7 Q. Mr. Finke, you have what's been marked
8 Exhibit 12. If you would take a few moments to
9 look at it. My first question is going to be
10 whether you have ever seen it before?

11 A. Yes, I have seen it before.

12 Q. Can you identify it for me?

13 A. It's Form 8K that Grace filed with the
14 SEC announcing its agreement in principle with
15 the personal injury committee and others to
16 resolve present and future asbestos related PI
17 claims.

18 Q. When did you first see it?

19 A. I believe it was shortly after it was
20 filed. A day or two after it was filed.

21 Q. Had you seen drafts of it before it was
22 filed?

23 A. I don't believe I did. But I -- I cannot
24 be a hundred percent sure I didn't see a draft.



1 But I don't think that I did.

2 Q. Do you know, if it wasn't you, do you
3 know who was involved at Grace in the preparation
4 of this document?

5 And just for clarification, it's an
6 8-K. It has attachments to it. You probably
7 noted.

8 A. Right.

9 Q. One is a pre release and the other is a
10 terms sheet. So we can probably take -- why
11 don't we take them one by one.

12 A. Typically, the 8-K's are prepared by an
13 in-house attorney, Michael Conron, who obtains
14 input and facts from persons who are involved
15 firsthand with the events being reported. In
16 this case, I believe he would have obtained the
17 details from Mark Shelnitz since Mr. Shelnitz was
18 personally involved in the negotiations.

19 Q. Did he receive any information from you?

20 A. No.

21 Q. Okay. How about the press release that's
22 attached to it? There is a couple of names at
23 the top from media relations and investor
24 relations. But do you know who prepared the



1 press release?

2 A. Where are you at? I'm not finding it.

3 Q. I think it's probably page five it starts
4 at.

5 A. Okay. Okay. There we go. William
6 Corcoran is -- I forget if he is executive
7 vice-president or senior vice-president. And he
8 is in charge of media relations, among other
9 things. Typically, Mr. Corcoran prepares press
10 releases. In the same manner as I described, I
11 described Mr. Conron preparing 8-K's. He would
12 have obtained the information from whoever was
13 personally involved.

14 Q. And would that have been Mr. Shelnitz or
15 someone else?

16 A. I'm pretty confident it would have been
17 Mr. Shelnitz.

18 Q. But it was not you?

19 A. Correct.

20 Q. Let's go to the terms sheet, which
21 appears to begin on page eight.

22 A. Um-hmm.

23 Q. Had you seen this terms sheet prior to
24 the filing of the 8-K?



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1 A. I believe I did.

2 Q. When?

3 A. I think I saw it in a prior draft.

4 Within a few days of the final, the final
5 version.

6 Q. Were you involved in preparing any of the
7 drafts?

8 A. No, I was not.

9 Q. Do you know who was?

10 A. No, I don't. I believe Mr. Shelnitz was
11 involved along with outside counsel.

12 Q. How about Mr. Hughes?

13 A. I don't know.

14 Q. Do you know who was involved for the
15 other constituencies that are a party to the
16 terms sheet?

17 A. No, I do not.

18 Q. In the first line of the text, it says,
19 this term sheet sets forth certain of the
20 principal terms and conditions.

21 Are there other principal terms and
22 conditions that are not reflected or were not
23 reflected in the terms sheet?

24 A. I don't know. I wasn't involved in the



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1 discussions. I don't know if there were other
2 principal terms and conditions that have been
3 agreed upon at that time and not included.

4 Q. Were any of Grace's insurers involved in
5 the discussions that led up to the execution of
6 the terms sheet?

7 A. Not to my knowledge. But, again, I
8 wasn't personally involved in the discussions.

9 Q. Do you know whether Grace's insurers were
10 purposely left out of any discussions leading up
11 to the terms sheet?

12 A. Not that I know of.

13 Q. Who would be the individual at Grace, to
14 your knowledge, that would know the answer to
15 those questions?

16 A. Mr. Shelnitz.

17 Q. If you look on the first page down at
18 I.A.1.b, titled, Insurance?

19 A. Yes.

20 Q. There is a reference there to the
21 assignment of insurance policies and all
22 insurance proceeds. Do you see that?

23 A. Yes.

24 Q. Did Grace, to your knowledge, seek the



1 consent of any of its insurers prior to agreeing
2 to that term with the other constituencies to the
3 terms sheet?

4 A. I don't know.

5 Q. Who would know?

6 A. Mr. Shelnitz.

7 Q. If you turn to the next page on page nine
8 under v. I want to direct your attention to the
9 second paragraph that begins with the word,
10 provided.

11 A. Okay.

12 Q. Do you understand what's being referred
13 to in that section?

14 A. No, I'm not sure what's being referred to
15 by the foregoing.

16 (Finke Deposition Exhibit Nos. 13 and
17 14 were marked for identification.)

18 BY MR. BROWN:

19 Q. Mr. Finke, you have two documents that
20 have been marked Exhibit 13 and one is Exhibit 14
21 in front of you. Can you just identify them both
22 for me?

23 A. Exhibit 13 is debtor's preliminary list
24 of witnesses that they intend to call during the



1 confirmation hearing and is dated March 13, 2009.

2 Exhibit 14 is the second amended case
3 management order related to the first amended
4 joint plan of reorganization and was ordered on
5 January 29, 2009.

6 Q. Would I be correct if I said that you
7 have seen both of these documents before?

8 A. Yes, you would.

9 Q. If you look at the witness list, you'll
10 note that your name appears first?

11 A. Yes.

12 Q. As someone who, at least on a preliminary
13 basis, is going to testify in Phases I and II of
14 the confirmation hearing?

15 A. Um-hmm.

16 Q. About company information.

17 What is the company information that
18 you possess relevant to plan confirmation?

19 MS. ESAYIAN: Objection to the form
20 of the question. You can answer, if you can.

21 THE WITNESS: I was asked by outside
22 counsel to be available to testify at one or both
23 of the confirmation hearings to the extent they
24 needed someone to present their basic company



1 information, such as anything from the nature of
2 our businesses to number of employees and more
3 specifically with respect to our asbestos
4 litigation and claims, both historical, meaning
5 pre-petition litigation history relating to
6 asbestos claims, as well as the asbestos related
7 claims filed in the Chapter 11.

8 The only thing I wanted to add was,
9 in a subsequent discussion, it was decided that
10 Jay Hughes would most likely handle any issues
11 relating or testimony relating to personal
12 injury -- asbestos personal injury claims and
13 issues.

14 BY MR. BROWN:

15 Q. That was going to be my question. You
16 used the generic term asbestos litigation. Did
17 you mean PD asbestos litigation?

18 A. Well, initially the discussion was
19 generic. But, as I say, subsequently it was
20 narrowed to property damage and attic insulation
21 within my purview.

22 Q. To your knowledge, you're not going to be
23 proffering any testimony on PI issues?

24 A. That is my understanding, yes.



1 Q. Would your answer be the same with
2 respect to insurance related issues?

3 A. Yes.

4 Q. How about with the manner in which
5 indirect asbestos PI trust claims are handled
6 under the plan?

7 A. I would expect that Jay Hughes would
8 handle that.

9 Q. Okay. If you can look at what's been
10 marked as Exhibit 14, the second amended case
11 management order. I want to direct your
12 attention specifically to paragraph two.

13 The second sentence in paragraph two
14 talks about the first phase of the confirmation
15 hearing. Do you see that?

16 A. Yes.

17 Q. And there are three Romanettes in that
18 sentence.

19 Do I understand you correctly that
20 you are not, to your knowledge, being proffered
21 to offer any testimony relevant to i or ii?

22 A. That's correct.

23 Q. And if you go to the next sentence, which
24 talks about the topics to be addressed in the



1 second phase of the confirmation hearing, are
2 you, to your knowledge, being proffered to offer
3 any testimony with respect to i or iii?

4 A. I think that's unknown at this point.

5 Q. Is that true for both i and iii?

6 A. Yes.

7 Q. Okay. I want to go back to the
8 preliminary witness list. And I think most of
9 these individuals on here we have already
10 identified in terms of what their acknowledge is.
11 Pam Zilly, she is with the Blackstone Group, she
12 is the financial person?

13 A. Correct.

14 Q. I believe you said Denise Martin is a PD
15 expert?

16 A. Yes, she is an expert. She'll offer
17 expert testimony concerning the likelihood that
18 future property damage and ZAI claims will be
19 brought.

20 Q. Okay. I believe I heard earlier the name
21 Hudson LaForce. Who is that?

22 A. He is our current chief financial
23 officer.

24 Q. And Derrick Tay?



1 A. He is a Canadian restructuring attorney
2 who represents Grace in Canada concerning the
3 Canadian ZAI claimants.

4 Q. And Mr. Dunbar, he is an outside
5 modelling consultant?

6 A. Yes, I believe that's right.

7 Q. Mr. Hughes we have talked about.

8 What about all the doctors?

9 A. Can you be more specific what you're
10 asking?

11 Q. What's the area? Have each of the other
12 witnesses listed here starting with I guess
13 Dr. Florence, are they all experts?

14 A. Other than Jay Hughes, yes.

15 Q. And they have all submitted reports at
16 this point?

17 A. I presume so.

18 (Finke Deposition Exhibit No. 15 was
19 marked for identification.)

20 BY MR. BROWN:

21 Q. All right. Mr. Finke, you have before
22 you a document marked Exhibit 15. The first
23 question is, can you identify it?

24 A. Exhibit 15 is debtors' response to



1 Government Employees Insurance Company and
2 Columbia Insurance Company's requests for
3 admission, interrogatories and requests for
4 production of documents.

5 Q. And I gather you have seen this document
6 before?

7 A. Yes, I have.

8 Q. Okay. If you would turn to the last
9 page.

10 A. Um-hmm.

11 Q. Is that your signature on the
12 verification?

13 A. Yes, it is.

14 Q. The verification is worded a little
15 oddly. At least in my experience.

16 The first question I have for you is
17 that, do you actually have any personal knowledge
18 of the information that's contained in the
19 responses to the interrogatories that you
20 verified?

21 A. Well, I'm just going to note for the
22 record that it's a rather long document. So if
23 you want him to read the whole thing, that's
24 going to take a while.



1 Q. I don't want him to read the whole thing.
2 If you turn to page 50.

3 A. I was just going to read the -- review
4 the answers to interrogatories.

5 In general, no, I would not have
6 firsthand knowledge of most of the facts or the
7 facts asserted in the responses to the
8 interrogatories.

9 Q. In your verification, you note, sort of
10 the middle or halfway down, that the responses
11 are true and correct to the best of my personal
12 knowledge or based on information supplied to me
13 by others.

14 A. Right.

15 Q. Who are the others?

16 A. Primarily counsel at Kirkland & Ellis.

17 Q. Anyone else?

18 A. No, I don't believe so.

19 Q. Okay. Can I direct your attention to the
20 first interrogatory?

21 A. Um-hmm.

22 Q. Just let me know when you're finished
23 reading it.

24 A. Okay. I'm ready.



1 Q. It says that, prior to September 19,
2 2008, which is when the initial joint plan was
3 filed, correct?

4 A. Yes.

5 Q. Okay. It says, prior to that time,
6 debtors did not communicate or consult with GEICO
7 or Columbia regarding the proposed terms of the
8 plan, asbestos PI trust agreement, asbestos
9 insurance transfer agreement with TDP.

10 Why not?

11 A. I was not involved in whatever decision
12 was made concerning communicating or consulting
13 with the insurers.

14 Q. And would that have been Mr. Shelnitz
15 again that was involved in that?

16 A. I don't know that. But that is who I
17 would -- who I would ask.

18 Q. I want to direct your attention to the
19 fourth interrogatory.

20 A. Okay.

21 Q. In Grace's response to interrogatory
22 four, the latter portion of it, it says, but also
23 does not prohibit participation. Do you see
24 that?



1 A. Yes.

2 Q. Could you describe for me your
3 understanding of the manner in which Grace's
4 insurance companies could participate in the
5 investigation and evaluation defense in allowance
6 or settlement of the asbestos PI claims in the
7 event the plan is confirmed?

8 A. My understanding of that provision is the
9 insurers could negotiate with the PI trust for
10 whatever role the insurers would seek to have
11 with respect to the claim submitted to the PI
12 trust.

13 Q. And with whom would they be negotiating
14 specifically, the individuals?

15 A. Well, the trustees. Whoever that is.

16 Q. Would the TAC be involved in that
17 process?

18 A. I would not know that. I do not know
19 that.

20 Q. So it's your understanding that the only
21 way in which the insurers would be involved was
22 through some sort of negotiation with the trust?

23 MS. ESAYIAN: Objection to
24 foundation. But you can answer, if you can.



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1 THE WITNESS: I wouldn't say it's the
2 only way because I haven't -- I'm not
3 knowledgeable enough about the manner in which
4 the trust would operate to know whether that's
5 the only avenue.

6 BY MR. BROWN:

7 Q. It's the only one you're aware of?

8 A. It is the only one I am aware of, yes.

9 Q. Is there someone that has some knowledge
10 about other mechanisms by which Grace's insurers
11 could be involved in the topics that are
12 identified in interrogatory number four?

13 A. I doubt very much that anyone at Grace
14 would have such knowledge since I don't believe
15 anybody at Grace has been involved in
16 bankruptcies before or asbestos 524 G trusts.

17 Q. If not at Grace, where or who?

18 A. You would have to consult with
19 experienced bankruptcy counsel.

20 Q. Kirkland & Ellis?

21 A. They are taken.

22 Q. Okay.

23 MR. BROWN: Why don't we take a five
24 minute break.



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1 THE WITNESS: Okay.

2 (Deposition recessed from 4:52 p.m.
3 to 5:03 p.m.)

4 BY MR. BROWN:

5 Q. Mr. Finke, I understand you had a
6 clarification on one of your responses?

7 A. Yes. With respect to Exhibit 15, I had
8 identified counsel as Kirkland & Ellis as having
9 supplied information upon which I relied in
10 connection with the debtor's interrogatory
11 responses. An additional person that I forgot
12 about was, but who did review the interrogatory
13 responses, was Jeff Posner. I also relied on his
14 review and comments concerning the answers.

15 Q. Did Mr. Posner review all of the answers
16 or were there certain ones that he passed on?

17 A. My understanding is he reviewed all of
18 them.

19 Q. The question will probably come up. But
20 there is a lot of other insurers here that served
21 interrogatories on you, on Grace. Is the answer
22 the same for all of them as well?

23 A. Yes. As far as I know, he reviewed all
24 of the interrogatory answers or answers to



1 interrogatories that have been propounded by
2 insurers.

3 Q. Is it fair to say that you didn't have
4 any independent knowledge of any of the responses
5 that were given to the insurance companies?

6 A. The answer is if I had -- if I had any,
7 it would be very little. I hate to make the
8 sweeping statement that there is not a single
9 answer.

10 Q. I'm just trying to save you the question
11 from seven other lawyers.

12 A. I understand. I just don't want to be
13 caught with a generalization where somebody finds
14 an exception.

15 Q. Okay. Fair enough.

16 Have you either pre-petition or
17 post-petition had occasion to review the terms of
18 any of Grace's insurance policies?

19 A. Certain specific provisions I have
20 reviewed. I have not read any of the policies in
21 their entirety. But, for example, in connection
22 with the Scotts adversary proceeding, I did
23 review the I guess relevant provisions of the
24 policy that Scotts is relying on.



1 Q. By that, do you mean the vendor
2 endorsement?

3 A. Yes.

4 Q. Anything else?

5 A. There might have been a few, very few
6 other portions of policies that I reviewed. But
7 nothing specific comes to mind.

8 Q. How about in connection with Kenneb's
9 claims? Have you reviewed any policies in
10 connection with that?

11 A. I have not.

12 Q. You're aware, are you not, that Grace had
13 a number of pre-petition settlement agreements
14 with various insurers?

15 A. Yes.

16 Q. Have you reviewed any of those
17 agreements?

18 A. I have not.

19 Q. You mentioned I guess that you had
20 reviewed the complaint, I think, in the Scotts
21 adversary?

22 A. Yes.

23 Q. When is the last time you reviewed that
24 complaint?



1 A. I don't think I have reviewed it since
2 shortly after they filed it.

3 Q. Back in the fall of 2004?

4 A. That sounds right, yeah.

5 Q. Is that when you reviewed the vendor
6 endorsement that you just referred to?

7 A. Yes. All at the same time.

8 Q. Do you have an understanding as to how
9 the claims that Scotts has against the various
10 insurers that are named in the adversary
11 proceeding, how those claims are treated under
12 the plan?

13 A. I believe they are treated as indirect PI
14 trust claims under the plan.

15 Q. And what does that mean in real terms?

16 A. That the insurers' claims would be
17 presented to the or submitted to the PI trust.

18 MS. ESAYIAN: Are you asking about
19 the insurers claims or Scotts' claims?

20 MR. BROWN: I was asking about the
21 Scotts claims against the insurers.

22 THE WITNESS: I apologize. I thought
23 you were referring to any insurers' claims
24 resulting from coverage of Scotts' claims.



1 Scotts' claims, I believe those are
2 also indirect PI trust claims.

3 BY MR. BROWN:

4 Q. And is it your understanding that they
5 are enjoined in their entirety as against the
6 insurers?

7 MS. ESAYIAN: Objection to form. But
8 you can answer, if you can.

9 THE WITNESS: I don't know.

10 BY MR. BROWN:

11 Q. Do you have an understanding as to
12 whether the claims that Keneb is asserting give
13 rise to any claims by certain insurers against
14 Grace?

15 A. I think, in theory, my understanding is
16 that, in theory, it could, they could, Keneb's
17 claims could give rise. But that the likelihood
18 that there is any coverage available is very
19 small.

20 Q. Coverage available to --

21 A. Keneb.

22 Q: Do you understand what the reason for
23 that is or the basis is for that statement?

24 A. Only that what coverage might otherwise



1 have been available has been exhausted.

2 Q. To the extent that the claims by Keneb do
3 give rise to claims by the insurers, how are they
4 treated under the plan, to your knowledge?

5 A. That I do not know.

6 (Finke Deposition Exhibit No. 16 was
7 marked for identification.)

8 BY MR. BROWN:

9 Q. All right, Mr. Finke, you have before you
10 Exhibit 16. Can you identify this document?

11 A. Yes. This is the debtors' response to
12 One Beacon America Insurance Company and Seaton
13 Insurance Company's requests for admission,
14 interrogatories and requests for production of
15 documents.

16 Q. Okay. And you'll note that on page 21,
17 the interrogatory responses begin?

18 A. Yes.

19 Q. And your verification, I believe, is
20 essentially identically worded to the one we just
21 looked at for GEICO and Columbia, is that
22 correct?

23 A. Correct.

24 Q. And am I correct that the direct source



1 of any knowledge with respect to the responses
2 comes either from Kirkland & Ellis or from
3 Mr. Posner?

4 A. That's correct.

5 Q. You don't have any personal knowledge of
6 the responses?

7 A. No, I do not.

8 Q. Let me direct your attention to
9 interrogatory number three and the response to
10 it.

11 A. Okay.

12 Q. Were you involved in the events leading
13 up to the January 13, 2005 amended joint plan
14 that Grace filed?

15 A. I was involved in certain aspects or
16 certain sections of the plan.

17 Q. Did you play a role with that plan
18 similar to the one you played with the joint
19 plan?

20 A. In general, yes.

21 Q. Are you familiar with the term resolved
22 that was used to describe the insurance policies
23 under that prior plan?

24 A. I remember the prior plan included that



1 term. And I remember quite a while ago reading
2 and understanding the defined terms in which that
3 word was used.

4 Q. What did you understand that word to mean
5 under the prior plan?

6 A. Unless I have it in front of me, I really
7 don't feel comfortable answering. Those
8 definitions, at least I found that those
9 definitions of the plan to be difficult to
10 distinguish and differentiate from one another.

11 Q. Well, I haven't gone back and looked at
12 it myself recently. But I don't actually think
13 it was defined under the prior plan.

14 A. Interesting. Under any of the --

15 Q. I don't believe so.

16 A. Okay.

17 Q. So you don't have any understanding as to
18 what it meant, assuming I'm correct, that it
19 wasn't a defined term?

20 A. If it was not, then, no, I would not
21 know.

22 Q. Let me direct your attention to the
23 response to interrogatory number four.

24 A. Okay.



1 Q. There is a phrase in the response that
2 begins or, to the extent permitted by the
3 asbestos insurance transfer agreement, an
4 asbestos insurance contributor. It's talking
5 about the assertion of claims.

6 MS. SIMON: I'm sorry. Are they
7 still on the phone? I just got a message that
8 they got kicked off.

9 MR. BROWN: Hello? Is anyone on the
10 line?

11 MS. SIMPSON: I'm sorry.

12 (Deposition recessed from 5:18 p.m.
13 to 5:20 p.m.)

14 MS. STOVER: This is Laura Stover for
15 Maryland Casualty and Zurick.

16 It was unclear earlier in the
17 deposition whether or not Exhibit 1 was for all
18 insurers to join in. I want to clarify for the
19 record that Maryland Casualty Company and Zurick
20 also joins in to Exhibit 1.

21 MR. BROWN: Okay.

22 BY MR. BROWN:

23 Q. Mr. Finke, before we lost our crowd on
24 the telephone, I was directing your attention to



1 the response to interrogatory number four. And a
2 particular phrase, which I read earlier.

3 Do you know whether there is any
4 provisions in the plan of insurance contributors
5 to assert claims against One Beacon under the
6 Commercial Union policies?

7 A. I don't know.

8 Q. Would Mr. Posner be the right individual
9 to question on that subject or would it be an
10 attorney from Kirkland & Ellis?

11 A. I'm not sure.

12 Q. All right. I want to turn to
13 interrogatory number eight. Okay?

14 Who, to your knowledge, decides the
15 validity of the claims that are referred to in
16 interrogatory number eight?

17 A. The trustees of the asbestos PI trust.

18 Q. And what are the criteria that the
19 trustees use to determine the validity?

20 A. Those are set forth I believe in the PI
21 TDP's. I don't know. I don't have them
22 memorized.

23 Q. Are there any criteria other than what
24 appears in the PI TDP's?



1 A. Not that I know of.

2 Q. Okay. You can put that aside.

3 I don't think Mr. Speights asked you
4 at the beginning of the deposition. So I will.

5 Did you review any documents in
6 preparation for this deposition?

7 A. Yes.

8 Q. Can you tell me what documents you
9 reviewed?

10 A. The ZAI terms sheet, ZAI class
11 settlement, the expert report of Denise Martin,
12 the Class 7A case management order, my calendar
13 over the past year and my notes from certain
14 meetings, settlement negotiations that occurred
15 over the past year.

16 Q. And let's start with the last one. What
17 meetings?

18 A. The ZAI mediation and settlement
19 discussions that I discussed with Mr. Speights.

20 Q. Okay. None of them related to meetings
21 involving a resolution of PI claims?

22 A. Correct.

23 Q. You mentioned the Class 7A CMO. I'm not
24 sure I know what that is.



1 A. It's a proposed case management order to
2 govern the treatment of traditional property
3 damage claims. I'm pretty sure it's one of the
4 exhibits to the plan.

5 Q. Okay. Got it.

6 MR. BROWN: All right. I'm going to
7 pass the witness. Thank you.

8 EXAMINATION

9 BY MS. ALCABES:

10 Q. Good afternoon, Mr. Finke. My name is
11 Elisa Alcabes with Simpson, Thacher & Bartlett.
12 We represent Travelers Insurance Company. I'll
13 try not to repeat anything that's said already.
14 I know it's been getting late.

15 You did say you hadn't reviewed any
16 pre-petition insurance settlement agreements, is
17 that correct?

18 A. That is correct.

19 Q. So is it fair to say you don't have any
20 familiarity with any settlements between Grace
21 and Travelers that were executed pre-petition?

22 A. That's correct.

23 Q. Did you ever have any discussions with
24 anyone after the bankruptcy started regarding



1 insurance for asbestos PD claims?

2 A. Yes. Not recently. But I know early on
3 we discussed with Jeff Posner whether there was
4 any insurance coverage available for property
5 damage claims.

6 Q. Go ahead.

7 A. And I was going to say, and by property
8 damage, I'm including attic insulation claims.

9 Q. And do you recall anything specific about
10 those discussions?

11 A. I don't know if I would call it specific.
12 What I do recall is that in general there is --
13 the answer is there is no coverage for
14 traditional property damage claims. But that
15 there might be coverage for Zonolite attic
16 insulation claims depending upon the date of
17 installation.

18 Q. And did you discuss any specific
19 insurance companies that might be providing that
20 coverage?

21 A. No.

22 Q. Do you remember the details of the
23 criteria that would apply in terms of whether the
24 insurance would be triggered?



1 A. Only that we would likely be required to
2 establish the date of installation. And there
3 was a question as to whether we have or would
4 have the sufficient documentation or other
5 evidence to do so.

6 Q. And did you look at any documentation
7 relating to insurance for ZAI claims?

8 A. No.

9 Q. Did Mr. Posner, as far as you know?

10 A. I don't know.

11 Q. Do you regard Mr. Posner as more
12 knowledgeable or less knowledgeable about those
13 issues?

14 A. Extremely more knowledgeable.

15 Q. Okay. Do you have knowledge as to
16 whether any insurance is going to be used to pay
17 for any asbestos PD claims under the plan?

18 A. I don't believe so. But I'm not certain.
19 I guess I'd say it's my understanding that there
20 isn't. But I'm not sure of how accurate that is.

21 Q. Is there someone else who would be more
22 certain?

23 A. Mr. Posner.

24 Q. Okay. And this may be related. But do



1 you know whether the PD trust will have any
2 rights under any insurance contracts, whether
3 it's policies or settlement agreements?

4 A. I don't believe they do or will.

5 Q. But, again, would Mr. Posner have more
6 knowledge of that?

7 A. I don't know whether there is any
8 available coverage. I don't know that he would
9 know what rights the PD trust would have or won't
10 have.

11 Q. And what about the reorganized debtors?
12 Do you have any knowledge of whether the
13 reorganized debtors will have any rights to
14 coverage for PD claims?

15 A. I don't believe they will.

16 Q. Do you know who was principally
17 responsible for participating in the drafting of
18 the insurance provisions in the plan for Grace?

19 A. No. I believe it was outside counsel but
20 I don't know.

21 Q. Was there anyone at Grace that was sort
22 of a point person for the insurance provisions?

23 A. No, not that I know of.

24 Q. Because there were quite a few sort of



1 insurance specific definitions in the plan, for
2 example.

3 So is outside counsel responsible,
4 was outside counsel responsible for that?

5 A. Yes.

6 Q. Did they work with anyone? To your
7 knowledge, did they work with anyone at Grace?

8 A. I believe they worked with Mr. Posner
9 from time to time. But to what extent and with
10 respect to what provisions, I couldn't say.

11 Q. Did you have any involvement in preparing
12 or reviewing responses to requests for admissions
13 that were served by Grace?

14 A. I reviewed them. They were drafted by
15 outside counsel. I reviewed them. I don't
16 recall if I had any comments or input.

17 Q. Do you recall whether you had any input
18 on the insurance issues that would have come up
19 in any of the requests for admissions?

20 A. Offhand, I don't recall having any. But
21 I would probably have to look at the requests and
22 the responses.

23 (Finke Deposition Exhibit No. 17
24 was marked for identification.)



1 BY MS. ALCABES:

2 Q. Can you just identify it for the record?

3 A. Exhibit 17 is debtors' responses and
4 objections to Travelers Casualty & Surety
5 Company's first set of requests for admission to
6 debtors.

7 Q. Do you recall seeing this document
8 before?

9 A. Yes.

10 Q. Did you review it before it was served on
11 Travelers?

12 A. Yes.

13 Q. Did you comment on it?

14 A. I did not.

15 Q. Did you participate in drafting any of
16 the answers?

17 A. No.

18 Q. And do you have any specific knowledge of
19 the basis for any of the answers?

20 A. No. That's why I didn't comment on it.

21 MS. ALCABES: Thank you. I have no
22 further questions. I pass the witness.

23 EXAMINATION

24 By MS. SIMON:



1 Q. Hi. My name is Marnie Simon and I'm
2 representing Firemen's Fund today.

3 Is it fair to say that if I showed
4 you debtor's responses to Firemen's Fund and AXA
5 Belgium, we were defined as certain insurers. If
6 I showed you debtor's responses to our discovery,
7 that your responses would be similar to the ones
8 from Travelers?

9 A. Yeah, I expect they would be, they would
10 be the same.

11 Q. You don't recall having any specific
12 factual information with specific regard to
13 Firemen's Fund or AXA Belgium?

14 A. No, I do not.

15 Q. Other than from insurance, do you have
16 any familiarity with how the debtors financed its
17 asbestos PI obligations pre-petition?

18 A. No, I really don't have any knowledge of
19 that.

20 Q. You don't have any knowledge about
21 whether or not the debtors had to borrow from its
22 lenders in order to finance its asbestos PI
23 obligations?

24 A. No, I don't know.



1 MS. SIMON: Okay. I don't have any
2 further questions.

3 EXAMINATION

4 BY MS. GRIFFIN:

5 Q. My name is Shannon Griffin. I'm with the
6 law firm of O'Melveny & Myers and we represent
7 Arrowood formerly known as Royal Indemnity. I
8 just have a few questions. I think a lot of them
9 were answered already so I won't repeat them.

10 Are you familiar with the disclosure
11 statement filed in the bankruptcy?

12 A. Yes.

13 Q. Is it fair to say that the disclosure
14 statement was accurate at the time it was filed?

15 A. Yes.

16 Q. I'm going to read a section to you. It's
17 Section 2.10.2.2 on page 39 of my copy, which I'm
18 not sure if that's accurate on all the copies.
19 But it's entitled, Primary Insurance Coverage.

20 About four sentences down, it starts
21 with, the coverage issued by Royal Indemnity
22 Company to Zonolite from March 31st, 1953, to
23 April 1st, 1963, was fully settled as to all
24 asbestos related claims in a January 5th, 1995



1 settlement agreement in which Grace Con released
2 Royal for claims, quote, in any way relating to
3 the New York primary action and/or payment or
4 handling of asbestos-related claims and other
5 product claims under the primary policies, end
6 quotes, as provided in, open paren, and as those
7 terms are defined, closed paren, in the
8 settlement agreement.

9 To your knowledge, was that a true
10 and accurate statement at the time it was
11 written?

12 A. I have no knowledge of the facts that you
13 just described or the agreements. So I would
14 only say, in general, Grace filed the disclosure
15 statement believing that the statements in them
16 were true and accurate. But I can't speak to
17 that specifically with any firsthand knowledge to
18 the portion that you just read into the record.

19 Q. Okay. But you have no reason to believe
20 that it's not accurate, is that correct?

21 A. Correct.

22 Q. Is it fair to say that, under the plan,
23 the Royal high level access policies are to be
24 assigned to the trust?



1 A. I don't know enough about it to be able
2 to comment.

3 Q. Is it fair to say that the plan
4 contemplated assigning Grace's unsettled policies
5 to the trust whether or not the insurers consent
6 to the assignment?

7 A. Can you read that again or repeat it?

8 (The previous question was read back
9 by the reporter.)

10 MS. ESAYIAN: Objection to form. You
11 can answer, if you can.

12 THE WITNESS: I believe that's
13 accurate.

14 BY MS. GRIFFIN:

15 Q. Is it true that there are explicit anti
16 assignment provisions in the Royal policies?

17 A. I have no knowledge of what's in the
18 Royal policies.

19 Q. You have no personal knowledge as to any
20 of the policies issued to Grace by Royal?

21 A. Correct.

22 Q. Okay. And I think this is going to
23 repeat. But just for clarification.

24 You have no personal knowledge of the



1 settlement agreement between Grace and Royal?

2 A. That's correct.

3 Q. Do you have any personal knowledge about
4 the exculpation clause under the plan?

5 A. Only that I have read it.

6 Q. Is it fair to say that, under that
7 clause, the plan proponents are seeking to impair
8 the rights of their insurers?

9 MS. ESAYIAN: Objection to form. The
10 document speaks for itself.

11 THE WITNESS: Do I have to answer
12 that one?

13 MS. ESAYIAN: You can answer, if you
14 can.

15 THE WITNESS: I would want to read
16 it.

17 MS. GRIFFIN: Okay. I think if you
18 give me two minutes, it may not be necessary.
19 Give me one second.

20 MS. SIMON: Can I actually ask a
21 follow-up question before we go on break?

22 MS. GRIFFIN: Sure.

23 EXAMINATION

24 BY MS. SIMON:



1 Q. I asked you earlier about how Grace,
2 other than through insurance, funded its asbestos
3 PI obligations. And you, to be clear, said you
4 didn't know, correct?

5 A. Correct.

6 Q. Do you know who at Grace would have such
7 knowledge?

8 A. These are pre-petition?

9 Q. Both pre-petition and post-petition.

10 A. I think the three general counsels I
11 mentioned would probably be able to answer that.

12 Q. And anyone else besides them?

13 A. Jay Hughes might know.

14 Q. What about Mr. Posner? Would he know?

15 A. I don't know if he would.

16 Q. Anyone else?

17 A. Not that I can think of.

18 MS. SIMON: Okay. Thank you. That's
19 all.

20 MS. GRIFFIN: Just a two minute break
21 and we might be done.

22 (Deposition recessed from 5:46 p.m.
23 to 5:52 p.m.)

24 EXAMINATION



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1 BY MS. GRIFFIN:

2 Q. Before we took the break, the last
3 question I asked you was whether or not the
4 exculpation clause sought to impair the rights of
5 the insurer. And you said you would have to read
6 it, is that correct?

7 A. Yes.

8 Q. If I showed it to you, would you be just
9 giving your personal opinion?

10 A. Yes.

11 Q. Okay. All right. Then we won't have to
12 do that. And I am finished with my questions.
13 But I think someone else has one more.

14 EXAMINATION

15 BY MR. SPENCER:

16 Q. Hi. My name is Shane Spencer
17 representing Continental Casualty Company and
18 Continental Insurance Company. Just hopefully
19 one question.

20 With regard to debtors' responses to
21 the discovery served by Continental Casualty
22 Company and Continental Insurance Company, would
23 your answers to that discovery be based on your
24 personal knowledge and also with regard to the



1 verification, would your answer be pretty much
2 the same as you had answered to the other
3 questions regarding discovery by each insurer?

4 MS. ESAYIAN: Objection to form. You
5 can answer, if you can.

6 MR. SPENCER: Sorry about that.

7 MS. ESAYIAN: Just go ahead and try
8 to answer.

9 MR. SPENCER: Sorry about that. It's
10 a long day. First question.

11 THE WITNESS: I expect that none of
12 the answers would have been based on -- none of
13 the debtors' answers would have been based on my
14 personal knowledge. And I expect that my answers
15 would be the same with respect to reliance on
16 information supplied by others as I described in
17 response to questions from the other insurers.

18 MR. SPENCER: I have no further
19 questions.

20 MR. BROWN: Lisa, I think we are
21 finished with the caveat that there is still
22 obviously outstanding discovery and documents
23 that haven't been produced. So we reserve our
24 right to recall him. I think that, Mr. Finke, I



RICHARD CHARLES FINKE

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1 think that's true of all the insurers. I'm sure
2 you reserve all of your rights as well.

3 MS. ESAYIAN: That sounds good.

4 Anybody else? Nobody else?

5 MS. ALCABES: Well, we all join in
6 that.

7 MS. ESAYIAN: Right.

8 Anybody else for questions?

9 All right.

10 (Deposition concluded at 5:59 p.m.)
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E X H I B I T S

FINKE DEPOSITION

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1	Arrowood's Objections to Anderson Memorial's Notice of Deposition of Richard Finke and the Debtors' Response	7
2	Zonolite invoice to Byars Machine Co.	135
3	Zonolite invoice to Columbia Plastering Co.	136
4	Zonolite invoice to Ranger Construction Co.	137
5	Zonolite invoice to Columbia Plastering Co.	137
6	Zonolite invoice to C. W. Kirkland Plastering Co.	138
7	Zonolite invoice to Bank of America Corp.	138
8	E-mail from Richard Finke dated March 4, 2005, to Dan Speights with attached document	142



I N D E X
E X H I B I T S

FINKE DEPOSITION

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9	E-mail from Dan Speights dated March 17, 2005, to Richard Finke, with attached document	142
10	E-mail from Dan Speights Dated April 7, 2005, to Richard Finke	143
11	Debtors' Memorandum in Support of Motion for Entry of Case Management Order, Motion to Establish Bar Date, Motion to Approve Claim forms, and Motion to Approve Notice Program	148
12	Securities and Exchange Commission Form 8-K	179
13	Debtors' Preliminary List of Witnesses That They Intend to Call During the Confirmation Hearing	184
14	Second Amended Case Management Order Related to the First Amended Joint Plan of Reorganization	184
15	Debtors' Response to Government Employees Insurance Company and Columbia Insurance Company's Requests for Admission, Interrogatories and Requests for Production of Documents	189



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16	Debtors' Response to One Beacon America Insurance Company and Seaton Insurance Company's Requests for Admission, Interrogatories and Requests for Production of Documents	200
17	Debtors' Responses and Objections to Travelers Casualty and Surety Company's First Set of Requests for Admission to Debtors	210



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7 BY THE DEPONENT.
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1 State of Delaware)
2)
3 New Castle County)

4 CERTIFICATE OF REPORTER

5 I, Allen S. Blank, Registered Merit
6 Reporter and Notary Public, do hereby certify
7 that there came before me on the 30th day of
8 March, 2009, the deponent herein, RICHARD CHARLES
9 FINKE, who was duly sworn by me and thereafter
10 examined by counsel for the respective parties;
11 that the questions asked of said deponent and the
12 answers given were taken down by me in Stenotype
13 notes and thereafter transcribed by use of
14 computer-aided transcription and computer printer
15 under my direction.

16 I further certify that the foregoing is a
17 true and correct transcript of the testimony
18 given at said examination of said witness.

19 I further certify that I am not counsel,
20 attorney, or relative of either party, or
21 otherwise interested in the event of this suit.

22 
23 Allen S. Blank, RMR
24 Certification No. 103-RPR
(Expires January 31, 2011)

DATED: April 3, 2009

COPY



